

1 MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
2 TRENT L. RICHARDS, ESQ.
Nevada Bar No. 11448
3 **THE BOURASSA LAW GROUP, LLC**
8668 Spring Mountain Road, Suite 101
4 Las Vegas, Nevada 89117
5 Telephone: (702) 851-2180
Facsimile: (702) 851-2189
6 Email: mbourassa@bourassalawgroup.com
7 trichards@bourassalawgroup.com
Attorneys for Defendants

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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 BRIAN M. WILSON,
13 Plaintiff,

14 vs.

15 AARGON AGENCY, INC., a Nevada
16 corporation, DUANE CHRISTY, DOES I-V,
inclusive and ROE Corporations VI-X,
17 inclusive,

18 Defendants.

Case No.: 2:07-CV-00616-LDG (VCF)

OPPOSITION TO PLAINTIFF'S
CONSOLIDATED MOTION IN LIMINE

19 Defendants Aargon Agency, Inc. and Duane Christy ("Defendants"), by and through
20 their attorneys, Mark J. Bourassa, Esq. and Trent L. Richards, Esq. of THE BOURASSA LAW
21 GROUP, LLC, hereby submit their Opposition to Plaintiff's Consolidated Motion in Limine
22 [dkt 96] (the "Motion").

23 This Opposition is made and based upon the pleadings and records on file herein, the
24 following Memorandum of Points and Authorities, and such evidence and argument as may be
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presented at the hearing on this Motion, if any.

DATED this 20th day of October, 2015

THE BOURASSA LAW GROUP, LLC

By: /s/ Mark Bourassa

MARK J. BOURASSA, ESQ.

Nevada Bar No. 7999

TRENT L. RICHARDS, ESQ.

Nevada Bar No. 11448

8668 Spring Mountain Road, Suite 101

Las Vegas, Nevada 89117

Telephone: (702) 851-2180

Facsimile: (702) 851-2189

Attorney for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF FACTS.

Defendant Aargon Agency, Inc. is engaged in the business of the collection of debts belonging to third parties. Docket No. 61 at ¶ 7. Defendant Duane Christy is Aargon's Director and CEO.

Account Notes are generated and maintained by Aargon in connection with every debt referred to it for collection. They contain the record of every contact Aargon has with a consumer as well as every action taken with respect to the account. Aargon also maintains a detailed compliance manual that it supplies to all employees which contains a step-by-step process regarding the handling of disputes made by consumers. During the litigation of this matter, contrary to Plaintiff's contention, Aargon produced this manual, which consists of hundreds of pages. See **Exhibit A**, transmittal letter and receipt of copy for supplemental disclosures. In particular, Aargon produced its "Dispute Letter Flow Chart," which gives employees detailed instructions regarding, among other things, which boxes to check in Aargon's computer system to ensure that accounts are placed on hold pending resolution of the dispute, to ensure that proper reporting is made to the reporting bureaus, and to ensure that letters receive responses in a timely manner.

1 On or about June 1, 2006, Aargon sent Plaintiff a dunning letter regarding a debt owed to
2 its client, Globalnet Communications, a/k/a Impulse Telecom. According to the Account Notes
3 regarding Plaintiff, on or about June 13, 2006, Aargon received Plaintiff's written dispute
4 regarding the validity of Plaintiff's unpaid account. Pursuant to Aargon's policies and
5 procedures, the dispute letter was scanned into Aargon's computer system and forwarded to
6 Aargon's clerical department for review and action on June 13, 2006.

7 For some unknown reason, however, and despite the procedures set forth in the Dispute
8 Letter Flow Chart, no response was sent to Plaintiff regarding his dispute letter. On June 22,
9 2006, Plaintiff called Aargon and requested all further communication with him be in writing.
10 Pursuant to Aargon's policies and procedures, on June 22, 2006, Aargon placed a hold on all calls
11 to Plaintiff. No further calls were made to Plaintiff.

12 On August 31, 2006, Plaintiff caused an electronic credit reporting dispute ("E-Oscar") to
13 be sent to Aargon. In response to the E-Oscar dispute, on August 31, 2006, Aargon placed all
14 credit reporting of the matter on hold. On September 6, 2006, an Aargon employee was able to
15 confirm that the alleged debt was in fact Plaintiff's and responded to the E-Oscar as valid.
16 Aargon's credit reporting of Plaintiff's account was based on the information provided to Aargon
17 by the original creditor.

18 Plaintiff filed his original Complaint in this matter against Aargon Agency, Inc. on May
19 10, 2007, alleging that Aargon violated the FDCPA, 15 U.S.C. §1692 *et seq.*, and the FCRA, 15
20 U.S.C. § 1681 *et seq.* See Docket No. 1. Thereafter, Plaintiff also filed a Motion to Amend the
21 Complaint to, *inter alia*, add Christy as a party. See Docket No. 13. The Court subsequently
22 granted Plaintiff's Motion to amend his Complaint. See Docket No. 47. Christy filed his Answer
23 on October 17, 2010. See Docket No. 60.

24 **II. Argument.**

25 **A. Plaintiff's Motion In Limine Re: Aargon Collection Manual Should Be Denied.**

26 In his Motion, Plaintiff seeks to exclude Aargon's "Collection Manual" and contends that
27 "Plaintiff has requested a copy of all policy and procedure manuals" and that "[n]one were
28 produced." However, this is wholly incorrect. Plaintiff has produced hundreds of pages of its
policy and procedure manuals in this matter. See **Exhibit A**. Indeed, part of the manual was filed

1 with this Court in connection with Aargon's Opposition to Plaintiff's Motion for Summary
 2 Judgment nearly three years ago in January of 2013. As these documents were produced in this
 3 litigation, and are relevant to the determination of Aargon's Bona Fide Error defense, they are
 4 properly admissible. *See* Fed. R. Evid. 402. While Plaintiff contend that the "Collection
 5 Manual" is not admissible based upon testimony of Christy, Christy testified only that hard copies
 6 of the manuals were destroyed. *See* Mot. at 5-6. As Plaintiff has not shown that the "collection
 7 manual" is inadmissible, Plaintiff's Motion should be denied.

8 **B. Plaintiff's Motion In Limine Re: Joint And Several Liability Of Christy Is**
 9 **Inappropriate And Should Be Denied.**

10 Next, Plaintiff appears to seek exclusion of any evidence that Christy is not jointly and
 11 severally liable. However, Plaintiff's purported Motion *in limine* does not seek the Court's ruling
 12 on an evidentiary issue; instead, it seeks summary judgment on the issue of joint and several
 13 liability. This is an improper motion *in limine*, and must be denied on that basis. *Petty v. Metro.*
 14 *Gov't of Nashville & Davidson Cnty.*, 687 F.3d 710, 720-21 (6th Cir. 2012) (it is "improper" to
 grant "a motion for summary judgment 'masquerading' as a motion in limine").

15 Indeed, as the Court has stated, "the Court will not convert a motion in limine into a
 16 motion for summary judgment, because this would deprive litigants of the 'procedural protections
 17 of notice which the federal rules require before judgment on the merits may be granted.'" *Badger*
 18 *v. Wal-Mart Stores, Inc.*, No. 2:11-CV-1609-KJD-CWH, 2013 WL 3297084, at *4 (D. Nev. June
 19 28, 2013) (*quoting* *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1070 (3d Cir.1990)); *see*
 20 *also Louzon v. Ford Motor Co.*, 718 F.3d 556, 561 (6th Cir. 2013). "Unlike a summary judgment
 21 motion, which is designed to eliminate a trial in cases where there are no genuine issues of
 22 material fact, a motion *in limine* is designed to narrow the evidentiary issues for trial and to
 23 eliminate unnecessary trial interruptions." *Bradley*, 913 F.2d at 1069. "In sum, where 'the motion
 24 in limine is no more than a rephrased summary-judgment motion, the motion should not be
 25 considered.'" *Badger*, 2013 WL 3297084, at *4 (*quoting* *Louzon*, 718 F.3d at 563); *see also*
 26 *Williams v. Johnson*, 747 F.Supp.2d 10, 14 (D.D.C.2010) ("In light of their limited purpose,
 27 motions *in limine* should not be used to resolve factual disputes, which remains the function of a
 28 motion for summary judgment, with its accompanying and crucial procedural safeguards.")

(internal quotation marks omitted); *Hinkle v. Ford Motor Co.*, No. 3:11–24–DCR, 2012 WL 5868899, at *8 (E.D. Ky. Nov. 20, 2012) (“[T]he Court will not rule on this substantive issue in a motion in limine.”); *Bell v. Prefix, Inc.*, No. 05–74311, 2009 WL 3614353, at *1 (E.D. Mich. Nov. 2, 2009) (“Normally, motions *in limine* are not proper procedural devices for the wholesale disposition of theories or defenses.”) (internal quotation marks omitted); *Ohio Oil Gathering Corp. III v. Welding, Inc.*, No. 2:09–cv–782, 2010 WL 5135999, at *3 (S.D. Ohio Dec. 9, 2010) (“Defendant’s motion is more a motion for judgment on the pleadings or for summary judgment ... than it is a motion *in limine*. The time for filing such dispositive motions has long closed, however, and Defendant cannot evade this Court’s summary judgment deadline simply by captioning its dispositive motion in a creative manner.”); *Goldman v. Healthcare Mgmt. Sys., Inc.*, 559 F.Supp.2d 853, 873 (W.D. Mich. 2008) (“Defendants’ motion does not raise questions of the admissibility of certain evidence or suggest that the jury would somehow be prejudiced by the evidence. Accordingly, there is no basis, as a motion *in limine*, for excluding this evidence.”).

The deadline for Plaintiff to move for summary judgment in this matter more than six years ago. *See* Doc. 81. Plaintiff should not be allowed to evade this deadline and seek summary judgment through this motion *in limine* in disguise. Furthermore, Plaintiff’s Motion contains no evidentiary support whatsoever, and therefore does not meet the requirements of Federal Rules of Civil Procedure Rule 56. Fed. R. Civ. Proc. 56(c). Plaintiff has not shown an *evidentiary* basis for excluding evidence relating to joint and several liability. Plaintiff’s Motion must therefore be denied in its entirety.

C. Plaintiff’s Motion In Limine Re: Admitted And Uncontradicted Facts Is Unnecessary And Should Be Denied.

Next, Plaintiff seeks to exclude any evidence that does not conform to the facts that Plaintiff contends have been admitted by Defendants. Plaintiff cites no authority for the proposition that this evidence is inadmissible.

Plaintiff bears the burden of proof as to his claims. He cannot circumvent that burden by attempting to have the Court exclude any evidence contrary to his claims. On the contrary, “[i]t is a misuse of a motion *in limine* to attempt to compel a witness or a party to conform his or her trial testimony to a preconceived factual scenario based on testimony given during pretrial discovery.”

1 *Kelly v. New W. Fed. Sav.*, 49 Cal. App. 4th 659, 672, 56 Cal. Rptr. 2d 803, 810 (1996). To the
 2 extent that Aargon or Christy has admitted any fact and offers testimony or evidence at trial that
 3 contradicts that admission, Plaintiff is free to offer the admission into evidence for impeachment
 4 purposes. *Id.* (“One purpose of pretrial discovery is to pin down the testimony of parties and
 5 witnesses which can be used for impeachment at the time of trial.”).

6 Furthermore, Plaintiff has failed to identify any specific evidence it contends that Aargon
 7 or Christy will introduce that would allegedly “contradict” admitted facts. Plaintiff has failed to
 8 identify a single document, witness, or other tangible thing that it anticipates that Aargon or
 9 Christy will introduce, rendering it impossible for Defendants to meaningfully respond to his
 10 Motion. *National Union v. L.E. Myers Co. Group*, 937 F. Supp. 276, 287 (S.D.N.Y.1996) (*citing*
 11 *United States v. Cline*, 188 F. Supp. 2d 1287, 1292 (D. Kan. 2002) *aff’d*, 349 F.3d 1276 (10th Cir.
 12 2003) (A party filing a motion *in limine* “should identify the particular evidence at issue and
 13 articulate with specificity the arguments supporting the position that the particular evidence is
 14 inadmissible on any relevant ground. A court is well within its discretion to deny a motion *in*
 15 *limine* that fails to identify the evidence with particularity or to present arguments with
 16 specificity.”). Plaintiff is asking to have this Court rule in a vacuum as to the potential
 17 admissibility of unspecified evidence. *See Kelly*, 49 Cal. App. 4th at 671, 56 Cal. Rptr. 2d at 809
 18 (1996). (denying a motion *in limine* where “no factual support was presented in connection with
 19 the motions, meaning the court would have to rule in a vacuum.”). Thus, Plaintiff’s Motion
 20 should be denied.

21 **D. Plaintiff’s Motion In Limine Re: Financial Repercussions For Defendants Should**
 22 **Be Denied As It is Unsupported.**

23 Plaintiff appears to seek exclusion of all evidence relating to the financial repercussion of
 24 a verdict on any party. Aargon does not dispute that such evidence or argument would be
 25 inappropriate, as it would not be relevant to the claims or defenses at issue in this matter.¹

26 **E. Plaintiff’s Motion In Limine Re: Settlement Negotiations Should Be Denied As It**
 27 **Is Unnecessary.**

28 ¹ It is unfortunate that Plaintiff did not contact counsel for Aargon to discuss motions in limine
 prior to filing, as this Motion could have been avoided.

Next, Plaintiff seeks exclusion of settlement discussions in this matter. As Plaintiff notes, such evidence is already precluded by Federal Rule of Evidence Rule 408. To the extent that Plaintiff simply seeks a ruling from this Court *in limine* that Defendants must follow the law as set forth in Rule 408, Plaintiff's Motion is inappropriate and should be denied on that basis. *See Kelly*, 49 Cal. App. 4th at 670, 56 Cal. Rptr. 2d at 809 (a motion *in limine* seeking a ruling "which would merely be declaratory of existing law" is improper). Moreover, Defendants will follow the Rules of Evidence at trial as it is bound to do, and therefore this Motion simply unnecessary.

F. Plaintiff's Motion In Limine Re: Undisclosed Evidence Should Be Denied As It Is Unnecessary.

Lastly, Plaintiff seeks to have the Court exclude any evidence not disclosed in this matter. Plaintiff's one-sentence motion fails to identify a single document, witness, or other tangible thing that it anticipates that a party will attempt to introduce at trial in violation of the disclosure requirements of the Federal Rules of Civil Procedure. Plaintiff has also not provided any facts in support of his motion, and therefore it is unclear what Plaintiff exactly is seeking to exclude. *National Union*, 937 F. Supp. at 287; *Kelly*, 49 Cal. App. 4th at 671, 56 Cal. Rptr. 2d at 809.

III. CONCLUSION.

For all the foregoing reasons, Defendant requests that the Court deny Plaintiff's Consolidated Motion in Limine.

DATED this 20th day of October, 2015.

THE BOURASSA LAW GROUP, LLC

By: /s/ Mark Bourassa
 MARK J. BOURASSA, ESQ.
 Nevada Bar No. 7999
 TRENT L. RICHARDS, ESQ.
 Nevada Bar No. 11448
 8668 Spring Mountain Road, Suite 101
 Las Vegas, Nevada 89117
 Telephone: (702) 851-2180
 Facsimile: (702) 851-2189
 Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of October 2015, I served a true and correct copy of the foregoing document entitled **OPPOSITION TO PLAINTIFF'S CONSOLIDATED MOTION IN LIMINE** via the CM/ECF filing system and U.S. Mail to the following persons:

Craig B. Friedberg, Esq.
4760 S. Pecos Road #103
Las Vegas, NV 89121
Attorney for Plaintiff

/s/ Hilary Steward
An employee of
The Bourassa Law Group, LLC